

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

The Burlington Northern and Santa Fe Railway Company and :  
Commuter Rail Division of the Regional Transportation Authority, a :  
division of an Illinois Municipal Corporation, :  
Petitioners, :

v. :

T04-0077

State of Illinois, Department of Transportation, and City of Aurora, :  
Respondents. :

Petition for an Order approving the construction of a pedestrian :  
underpass crossing beneath the main line tracks of the Burlington :  
Northern and Santa Fe Railway Company ("BNSF") at or near BNSF :  
milepost 37.17 located at or near the BNSF/METRA Commuter Rail :  
Station in Aurora, Illinois. :

**ORDER**

By the Commission:

On November 18, 2004, the Burlington Northern and Santa Fe Railway Company ("BNSF") and Commuter Rail Division of the Regional Transportation Authority ("CRD"), a division of an Illinois Municipal Corporation, filed with the Illinois Commerce Commission, a verified petition in the above-captioned matter naming as Respondents the State of Illinois, Department of Transportation ("IDOT"), and the City of Aurora, in which it requested approval of the construction of a pedestrian underpass crossing under the main line tracks of the BNSF at milepost 37.17 located near the BNSF/METRA Commuter Rail Station in Aurora.

Pursuant to notice, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's Springfield office on February 3, 2005. Petitioners were represented by counsel. Jeff Harpring, Rail Safety Engineer with the IDOT Bureau of Local Roads and Streets represented IDOT in support of the Petition. Staff from the Commission's Transportation Division, Railroad Section, also entered an appearance, and supported the Petition. Petitioners presented the testimony of Patricia Casler, BNSF Director of Suburban Services, and Aziz Tokh, Chief of Design for METRA-Capital Improvement Projects, Chicago Region.

The Petition seeks approval of the construction of a pedestrian walkway that is located within the Aurora Transportation Center, a commuter station on the BNSF commuter line. The terminal point is Aurora, Illinois. The pedestrian walkway goes from a parking lot located to the southeast of the Transportation Center, then under the two main line freight/Amtrak tracks of BNSF, and terminates at the commuter train platforms next to the Transportation Center. At the commencement of the Hearing, BNSF counsel advised the ALJ that the pedestrian underpass has already been built and is in service.

Counsel indicated that the filing of this Petition resulted from confusion and debate within the BNSF and METRA whether the Commission has jurisdiction over pedestrian subways that were not located within the public right of way. The project in this case began in 1999, prior to the Illinois Commercial Transportation Law amendment in 2000 which expanded the Commission's authority over pedestrian subways of this type. (625 ILCS 5/18c-7401.) When the jurisdictional question arose, the parties thought it prudent to petition the Commission for approval of the construction of this pedestrian subway.

Patricia Casler testified that her duties as BNSF Director of Suburban Services include oversight of all administrative aspects of the Railroad's relationship with METRA such as lease agreements, capital improvements and public projects. In 1999 METRA designed improvements for the Aurora Transportation Center which included construction of an additional parking lot to the southeast of the Center. As the new parking lot was located to the east of the two commuter tracks and platforms, and also to the east of the adjacent two mainline freight/Amtrak tracks of the BNSF, the original design called for construction of the pedestrian subway to carry the public underneath the two mainline tracks of the BNSF so the public could safely access the commuter tracks platforms. According to Ms. Casler, approximately 98 commuter trains enter and leave the Transportation Center per day carrying 2000 commuters. The adjacent two mainline tracks of BNSF carry primarily freight trains, but are also used by 6 Amtrak trains per day.

The new parking lot was built in the first phase of the construction project. While it was included in the original design and plans, the pedestrian underpass was not immediately constructed due to budget constraints. After the parking lot was completed, many commuters walked to the commuter platforms by walking across the double mainline tracks of the BNSF, rather than using the alternate route of crossing over a grade separation at Spring Street just south of the parking lot. This created a safety issue, prompting the eventual completion of the pedestrian subway. BNSF reviewed the design and plans to assure that there would be no adverse effects of the construction to the mainline tracks, and METRA arranged for the actual construction of the lot and subway, which has been paid for with grant money and METRA's own funds. Ms. Casler testified that Petitioners are not requesting any funding from the Commission and the Grade Crossing Protection Fund in this case. BNSF and METRA have entered into a license agreement providing for the maintenance and use of the pedestrian tunnel. Since the completion of the pedestrian subway, the traveling public has been using it to travel under the BNSF mainline tracks and gain access to the commuter train platforms, providing great safety for the commuting public. Petitioners seek approval for the construction and operation of the pedestrian subway.

Mr. Aziz Tokh is a licensed architect and oversaw the design and construction of the pedestrian tunnel. He testified that the original 1999 design called for construction of both the parking lot and the subway. The parking lot was constructed in 2000. The tunnel construction was delayed due to budget problems, but began in 2003 and was completed in mid-2004. Mr. Tokh testified that the subway was necessary due to the significant safety issue with commuters walking across the two mainline BNSF tracks. According to Mr. Tokh, the pedestrian tunnel has totally kept commuters off of the tracks, thus making the area completely safe for commuters' use. He testified that the

design plans and construction meet all Commission safety requirements, and that the subway is totally compatible with the Americans with Disabilities Act ("ADA"). He stated that the tunnel is well lit, and that by agreement METRA is responsible for maintenance of the structure and area. Additionally, there is an agreement in place with the City of Aurora to provide security for the tunnel and parking lot. Detailed design and construction plans for the project, as well as a copy of the License Agreement for Tunnel Construction, Maintenance and Use entered into between the BNSF and CRD were admitted into evidence.

The Commission, having considered the evidence of record, is of the opinion and finds that:

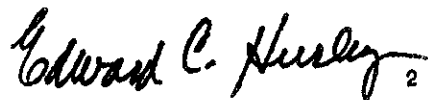
- (1) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) the recitals of fact, as set forth in the prefatory portion of this Order, are true and correct and are hereby adopted as findings of fact;
- (3) permission should be given for the construction and maintenance of the pedestrian underpass crossing beneath the mainline tracks of the BNSF at or near BNSF milepost 37.17 located at or near the BNSF/METRA Commuter Rail Station in Aurora, Illinois.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the construction of the pedestrian underpass crossing beneath the mainline tracks of the Burlington Northern Santa Fe Railway Company at or near BNSF milepost 37.17 located at or near the BNSF/METRA Commuter Rail Station in Aurora, Illinois, be and the same is hereby approved.

IT IS FURTHER ORDERED that the Burlington Northern Santa Fe Railway Company shall, within thirty (30) days of this Order, submit a completely updated United States Department of Transportation Inventory Form to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 14<sup>th</sup> day of September 2005.

Handwritten signature of Edward C. Husley in black ink.

Chairman